



Gutierrez Construction Co., Inc.
One Wall Street
Burlington, Massachusetts 01803

SUBCONTRACT AGREEMENT SA #111162-011

THIS SUBCONTRACT AGREEMENT made and effective as of the 12th day of September, 2011

BY AND BETWEEN Gutierrez Construction Co., Inc., a duly organized Massachusetts corporation with a usual place of business at One Wall Street, Burlington, MA 01803, hereinafter called the "CONTRACTOR" and Comm Tank of 84 New Salem Street Wakefield, MA 01880, hereinafter called the "SUBCONTRACTOR."

WHEREAS, CONTRACTOR has entered into an Agreement (hereinafter "Prime Agreement") with 100 Nagog Park LP, hereinafter called OWNER, for certain work, a part of which is the work to be performed by SUBCONTRACTOR under this Subcontract Agreement;

WHEREAS, the project is 100 Nagog Park Acton, 100 Nagog Park, Acton, MA. 01720, hereinafter called the "Project";

WHEREAS, the ARCHITECT and/or ENGINEERS on the Project are: Cube 3 Studio LLC; and

WHEREAS, the description of the Work is outlined in **Exhibits A and B**, and **Article 2** of this Subcontract Agreement. The Subcontract Price of this work is as outlined below and further detailed in the Exhibit B:

Subcontract Price: \$4,550.00

ARTICLE 1 - EXTENT OF AGREEMENT AND SUBCONTRACTOR'S REPRESENTATIONS

- 1.1 All prior negotiations, agreements, verbalizations, memoranda and other writings are reflected solely by and are superseded by the language herein and are hereby merged into this Subcontract Agreement. Any changes to this Agreement must be in writing.
- 1.2 SUBCONTRACTOR'S Representations. SUBCONTRACTOR represents that it has familiarized itself with the nature and extent of the Work, site, locality (including any studies and/or reports furnished by or on behalf of OWNER relating to the specific conditions at the site), and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or any aspect of furnishing of the Work.

ARTICLE 2 - SUBCONTRACTOR'S RESPONSIBILITIES

- 2.1 The SUBCONTRACTOR will furnish and pay for all work, materials and supplies, labor and supervision, tools, equipment, power, details, computations, drawings, schedules, and all other facilities, including all necessary scaffolding, and/or equipment, and fully construct, and in a good, substantial, thorough and workmanlike manner perform, and in every respect complete tank removal/install as specified or indicated in Exhibits A, B, and C of this Subcontract Agreement to the full and reasonable satisfaction of the CONTRACTOR and/or ARCHITECT and/or OWNER. The SUBCONTRACTOR hereby undertakes to the CONTRACTOR all obligations with respect to the Work that the CONTRACTOR has undertaken to the OWNER in the Prime Agreement, which is incorporated herein by reference. SUBCONTRACTOR'S general warranty of performance shall run for a minimum of twelve (12) months from the date of final acceptance of SUBCONTRACTOR'S work, or such other longer time as required under the Prime Agreement.
- 2.2 SUBCONTRACTOR shall supervise and direct the Work, using the SUBCONTRACTOR's best skill and attention. The SUBCONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences and procedures for the Work and for coordinating all portions of the Work under this Subcontract Agreement.
- 2.3 SUBCONTRACTOR shall after each work day, without extra charge, clean up its work site and remove from the Project site or to an approved location all its rubbish, debris, construction equipment, tools, and surplus material which may accumulate during the prosecution of the SUBCONTRACTOR's Work covered by this Subcontract Agreement. If this provision is not complied with promptly, the CONTRACTOR, upon either verbal or written notification to the SUBCONTRACTOR, will perform the necessary cleanup at SUBCONTRACTOR'S sole expense.
- 2.4 SUBCONTRACTOR and SUBCONTRACTOR's employees, subcontractors, vendors, and agents shall, while upon or about the premises or Project site, observe and comply with all fire, safety, and other rules and regulations prescribed by the CONTRACTOR, or others.
- 2.5 SUBCONTRACTOR further warrants that it is familiar with and shall fully comply with, at its own expense, all provisions of the applicable Federal Occupational Safety & Health Act, Equal Employment Opportunity Programs and, all applicable Fair Employment Practices Laws, Affirmative Action Programs, and Minority Manpower Programs. SUBCONTRACTOR alone is obligated to provide for the safety of its employees at the jobsite performing the Work.
- 2.6 SUBCONTRACTOR shall at all times protect its completed Work, Work in progress, as well as the work of other subcontractors from damage caused by operations under this Subcontract Agreement and shall protect all property from injury or loss including, but not limited to, erection and maintenance of barriers, barricades, safety rails, and protection required by standards of good practice or recommended by governmental authority. SUBCONTRACTOR shall correct and/or replace any property lost or damaged, and shall indemnify, defend and hold harmless CONTRACTOR in accordance with Article 6 of this Subcontract Agreement. SUBCONTRACTOR shall adequately protect adjacent property, as provided by all laws, regulations and ordinances and good building practices.

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- 2.7 SUBCONTRACTOR warrants and guarantees all materials and equipment furnished will be new unless otherwise allowed by CONTRACTOR, and all Work performed is free from all defects due to faulty materials or workmanship, and that the quality of material and workmanship supplied on the Work by the SUBCONTRACTOR is in full compliance with the Scope of Work attached as **Exhibit B**.
- 2.8 Within the Subcontract Price, SUBCONTRACTOR shall pay the amount of any and all sales or other taxes whatsoever applicable to the labor, materials and/or equipment supplied by or on behalf of SUBCONTRACTOR in the performance of the Work hereunder.
- 2.9 SUBCONTRACTOR shall at its own cost and expense apply for and obtain all permits and licenses which may be required by law or any governmental, public, or private authority for the performance of the Work or any portion thereof. SUBCONTRACTOR shall further, at its own cost and expense, comply with all federal, state, municipal, and other laws, regulations, and rulings in prosecuting the Work, or any portion thereof, and shall further indemnify, defend and hold harmless CONTRACTOR against any and all claims for SUBCONTRACTOR'S non-compliance thereof.
- 2.10 In the event SUBCONTRACTOR subcontracts any portion of its Work hereunder, SUBCONTRACTOR, in advance of any such subcontracting or delegation of its Work and in a timely manner so as not to impact the Project schedule, shall provide CONTRACTOR with the names and addresses of any sub-subcontractor or supplier, at any tier whatsoever, and CONTRACTOR shall have the right to pre-approve the same as provided in Paragraph 3.6 below.
- 2.11 The SUBCONTRACTOR shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the CONTRACTOR or other subcontractors.
- 2.12 The SUBCONTRACTOR shall submit to the CONTRACTOR a schedule of values allocated to the various parts of the Work of this Subcontract Agreement, aggregating the Subcontract Price, made out in such detail as the CONTRACTOR and SUBCONTRACTOR may agree upon or as required by the OWNER, and supported by such evidence as the CONTRACTOR may require. In applying for payment, the SUBCONTRACTOR shall submit application for payments based upon this schedule.
- 2.13 The SUBCONTRACTOR shall furnish to the CONTRACTOR periodic progress reports on the Work of this Subcontract Agreement as mutually agreed, including information on the status of materials and equipment which may be in the course of preparation, manufacture or transit.
- 2.14 The SUBCONTRACTOR agrees that the CONTRACTOR and the ARCHITECT will each have the authority to reject Work of the SUBCONTRACTOR which does not conform to the Contract Documents. The ARCHITECT'S decisions on matters relating to aesthetic effect shall be final and binding on the SUBCONTRACTOR if consistent with the intent expressed in the Contract Documents.
- 2.15 The SUBCONTRACTOR shall cooperate with the CONTRACTOR, other subcontractors and the OWNER'S own employees whose work might interfere with the Work hereunder. The SUBCONTRACTOR shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Agreement, specifically noting and advising the CONTRACTOR of potential conflicts between the Work and that of the CONTRACTOR, other subcontractors or the OWNER'S own employees.

ARTICLE 3 - COMPENSATION, MEASUREMENT AND PAYMENT

- 3.1 The Subcontract Price herein agreed to be paid by the CONTRACTOR to the SUBCONTRACTOR shall be the total compensation for the full performance and completion of the Work. It is further agreed that the time or times specified herein shall not be construed to limit and restrict the obligation of SUBCONTRACTOR to such period, but SUBCONTRACTOR shall proceed with the Work during all such times as shall be necessary to perform and complete the Work, at no further expense to the CONTRACTOR than as herein stated.
- 3.2 Within fourteen (14) days after CONTRACTOR receives payment from the OWNER on account of the SUBCONTRACTOR'S Work, it shall pay said sum to the SUBCONTRACTOR less retainage of ten percent (10%) or greater amount as may be withheld by OWNER. It is expressly acknowledged that receipt of payment by the CONTRACTOR from the OWNER on account of the work performed by the SUBCONTRACTOR shall be a condition precedent to any obligation by CONTRACTOR to make any payment to the SUBCONTRACTOR.
- 3.3 The amounts to be retained by the CONTRACTOR shall become due and payable upon determination by CONTRACTOR of the final quantities hereunder and receipt of payment of the retainage by the CONTRACTOR from the OWNER; and, as a further condition precedent to payment of any retainage, SUBCONTRACTOR must furnish a release (in the form attached hereto as **Exhibit E**) along with evidence that the Work under this Subcontract Agreement has been fully performed and all charges and claims satisfied and all bills paid in full for labor, materials, equipment and supplies excepting any claims asserted by SUBCONTRACTOR that are unresolved at that point. All required documentation including, without limitation, guarantees, warranties, as-builts, drawings, and certificates of compliance must be submitted and approved by the CONTRACTOR prior to the release of any retainage. It is expressly acknowledged that receipt of payment by the CONTRACTOR from the OWNER on account of the Work performed by the SUBCONTRACTOR shall be a condition precedent to any obligation by CONTRACTOR to make any payment to the SUBCONTRACTOR. For MEP SUBCONTRACTORS only, receipt by CONTRACTOR of an Operating and Maintenance Manual and as-built plans, both in electronic format, and proof of payment of all applicable Massachusetts sales taxes, shall be a condition precedent to CONTRACTOR'S obligation to make final payment to SUBCONTRACTOR hereunder.
- 3.4 The making of any progress and/or final payment hereunder shall not be construed as an acceptance of defective or improper materials or workmanship.
- 3.5 All SUBCONTRACTOR Applications for Payment shall be submitted to the Project office on the form supplied by the CONTRACTOR (a copy of which is attached hereto as **Exhibit D-1**), complete in all respects, or, at SUBCONTRACTOR'S election, in the form of AIA G702 and G703 (including the partial waiver attached hereto as **Exhibit D-2**), together with all supporting backup as required by the Contract Documents (including said schedule of values), CONTRACTOR, and/or the OWNER, by the 25TH day of the month, or any alternative date as specified by the CONTRACTOR. Failure to submit any required documents will cause the SUBCONTRACTOR'S payment requisition to be returned for correction and resubmitted when complete for the next scheduled estimate with the Owner.
- 3.6 SUBCONTRACTOR shall not utilize "independent contractors" as employees to perform its Work hereunder and, to the extent that SUBCONTRACTOR determines to subcontract any portion of the Work hereunder, it shall so notify CONTRACTOR in writing, together with a copy of the proposed Subcontract, and CONTRACTOR shall have the right to approve or deny any such request for subcontracting.

ARTICLE 4 - CONTRACT SCHEDULE/COMPLETION DATE

- 4.1 The SUBCONTRACTOR shall substantially complete its Work on or before the date set forth on Page 1 of this Agreement, subject to adjustments and/or extensions as allowed by CONTRACTOR and/or OWNER as applicable. SUBCONTRACTOR shall be notified from time to time of the progress schedule and of subsequent changes in the progress schedule and additional scheduling details.
- 4.2 Time is of the essence in the performance of the Work under this Subcontract Agreement. In the event the SUBCONTRACTOR does not prosecute the Work in a timely and efficient manner, the CONTRACTOR, in its sole and absolute discretion, may supplement the SUBCONTRACTOR'S labor, materials and/or equipment, or terminate and replace the SUBCONTRACTOR.

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4.3 In the event SUBCONTRACTOR fails, without excuse (i.e. meaning change orders approved by CONTRACTOR, delays so approved pursuant to Paragraph 9.1 and/or Force Majeure events with prompt notice to CONTRACTOR) to substantially complete the Work on or before the Substantial Completion Date set forth above, as extended, SUBCONTRACTOR shall be liable to CONTRACTOR for any liquidated and/or actual damages sustained by CONTRACTOR due to such delay. No extension of time will be valid without the CONTRACTOR'S written consent after notice or claim made by the SUBCONTRACTOR.

4.4 Should SUBCONTRACTOR fail to begin, continue, satisfactorily progress and/or complete the Work as provided in *Exhibit B* due to the action or inaction of SUBCONTRACTOR in that event the SUBCONTRACTOR hereby covenants and agrees to indemnify, save harmless and reimburse the CONTRACTOR from any and all cost, expense loss or damage, including without limitation reasonable attorney's fees and costs, which CONTRACTOR may be compelled to make good to the OWNER, under the Prime Agreement for or on account of SUBCONTRACTOR's delay.

ARTICLE 5 - CHANGES IN THE WORK

5.1 Unless otherwise noted in the Prime Agreement, changes in the Work shall only be made by written Change Order executed by the CONTRACTOR prior to the commencement of any such changed work. No other changes will be recognized or paid for.

5.2 Without invalidating this Subcontract Agreement, the CONTRACTOR may order changes in the Work within the general scope of the Work consisting of additions, deletions, changes or other revisions, and the Subcontract Price and Substantial Completion Date shall be adjusted accordingly.

5.3 In the event SUBCONTRACTOR performs any Work on a "Cost Plus," "Time and Material," or other cost basis, SUBCONTRACTOR agrees as follows:

5.3.1 SUBCONTRACTOR shall maintain accurate and detailed accounts for each such item of work, which shall be presented to CONTRACTOR for confirmation on a daily basis;

5.3.2 SUBCONTRACTOR shall permit CONTRACTOR to audit SUBCONTRACTOR's records and will permit the auditors reasonable access to such books and records pertaining to all costs for audit purposes at all reasonable times;

5.3.3 SUBCONTRACTOR shall, if requested and as a condition to final payment hereunder, furnish statements, invoices, receipts, vouchers, and other information as may be required to assist CONTRACTOR in auditing the accounts pertaining to all claimed change order costs.

5.4 In the event of any dispute over any claimed change in the Work, SUBCONTRACTOR shall continue to work upon the direction of CONTRACTOR and shall maintain records of all costs of such disputed work.

ARTICLE 6 - DEFENSE AND INDEMNITY AGREEMENT

6.1 To the fullest extent permitted by law, the SUBCONTRACTOR shall defend, indemnify and hold harmless CONTRACTOR, OWNER, TENANT and the ARCHITECT/ENGINEER, and anyone else required by the Prime Agreement, from any and all claims, liabilities, demands and causes of action (including, without limitation, reasonable attorneys' fees and costs) for or on account of any injury to persons (including death), damage to property, fines, penalties' assessments, or any loss of whatever kind or nature arising out of or in consequence of the performance of the SUBCONTRACTOR'S Work hereunder, provided such are caused in whole or in part by any negligent act or omission or breach of the terms of this Subcontract by SUBCONTRACTOR or anyone employed by the SUBCONTRACTOR, or working under those employed by the SUBCONTRACTOR at any level, regardless of whether or not caused in part by a party indemnified hereunder. SUBCONTRACTOR will defend all such claims at its own cost and expense and shall reimburse the CONTRACTOR for any attorneys' fees incurred by the CONTRACTOR with respect to any such claim.

6.2 The indemnification obligation under this Article 6, or any other indemnity obligations contained in this Agreement, shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the SUBCONTRACTOR or the SUBCONTRACTOR's sub-subcontractors under insurance for workers, or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

6.3 To the fullest extent permitted by law, and provided that CONTRACTOR makes timely payments of any undisputed amounts due, the SUBCONTRACTOR agrees to hold harmless and indemnify the CONTRACTOR and OWNER from any liens or claim of liens filed by any third party claiming to have provided labor, materials and/or equipment to the Project arising out of SUBCONTRACTOR'S performance of the Work. SUBCONTRACTOR shall, within three (3) days' written notice from CONTRACTOR of the filing of a lien, either obtain and record dissolution of such lien, or obtain and record a bond to discharge such lien, all at SUBCONTRACTOR'S sole cost and expense. SUBCONTRACTOR shall reimburse CONTRACTOR for any costs incurred by CONTRACTOR and/or OWNER to discharge such lien, including bond premiums and all reasonable attorneys' fees.

ARTICLE 7 - INSURANCE AND SAFETY

7.1 SUBCONTRACTOR shall maintain all insurance coverages described in *Exhibit C*, at all times while performing work hereunder, including any repair or replacement work required of SUBCONTRACTOR. The insurance provided by the SUBCONTRACTOR pursuant to this Subcontract Agreement shall cover, among other risks, the risks of Article 6 herein. The insurance shall contain a complete Waiver of Subrogation in favor of the CONTRACTOR and the same shall be carried until the date on which all property of SUBCONTRACTOR has been removed from the Project or representatives of SUBCONTRACTOR have departed therefrom, whichever date is later. All SUBCONTRACTOR insurance will be endorsed to be primary coverage to any insurance maintained by CONTRACTOR, with CONTRACTOR'S coverage being non-contributory. SUBCONTRACTOR shall provide evidence of insurance coverage, acceptable to CONTRACTOR, prior to commencement of any work on the Project site.

7.2 All insurance required hereunder shall be endorsed to name CONTRACTOR and any other interested parties as designated by the Owner, as additional insureds on all liability policies of the SUBCONTRACTOR, throughout the duration of the Project, and for the additional two (2) years after final payment for the SUBCONTRACTOR'S products and completed operations coverage..

7.3 Property insurance coverage may be provided by the OWNER, and may be limited to coverage for the Owner, Lender and CONTRACTOR only and limited to the perils of fire, lightning, explosion (excluding steam boilers), wind, hail, vandalism, or civil commotion. The SUBCONTRACTOR will be responsible for any deductible amount assessed on any covered property loss if the damage is caused in whole or in part by the negligence or breach of any Subcontract obligation by SUBCONTRACTOR.

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- 7.4 SUBCONTRACTOR agrees to furnish insurance which shall insure all its equipment and tools, any tools and equipment rented to the CONTRACTOR for its use on other portions of the contract or elsewhere which also lists the CONTRACTOR as an additional insured.
- 7.5 The SUBCONTRACTOR shall take all reasonable and appropriate safety precautions with respect to the Work, and shall strictly comply with all relevant safety measures and with all applicable federal, state and local laws, ordinances, rules, regulations and orders for the safety of persons and property. Without limiting the generality of the foregoing, the SUBCONTRACTOR shall comply, and shall cause its sub-subcontractors, materialmen and suppliers to comply fully with all provisions of the Federal Occupational Safety and Health Act and Mass. G.L. c. 21E. All materials, equipment, machinery and other items incorporated in the Work shall comply fully with all applicable federal, state and local laws, ordinances, rules, regulations and orders. The SUBCONTRACTOR shall also comply fully with all regulations and rules of the Board of Fire Underwriters, and other applicable insurance regulatory bodies, and shall cause its sub-subcontractors, materialmen and suppliers to do the same.

ARTICLE 8 - BONDS

- 8.1 SUBCONTRACTOR shall, at its own expense, when requested by the CONTRACTOR in writing, furnish performance and payment bonds with CONTRACTOR as obligee, each in an amount at least equal to its Subcontract Price, for the faithful performance of the Work and for the prompt payment of all SUBCONTRACTOR's obligations incurred under this Subcontract Agreement. These bonds shall remain in effect for at least until one year after the date when the final payment becomes due and thereafter so long as SUBCONTRACTOR's obligations continue with respect to the Work or the warranties relating thereto. All bonds shall be issued and executed by a surety company acceptable to the CONTRACTOR.

ARTICLE 9 - NON-COMMENCEMENT, DELAY, SUSPENSION OR TERMINATION

- 9.1 The SUBCONTRACTOR shall have no claim for damages for delays, hindrances, and obstructions to its Work, or other such events no matter how or by whom caused. In case of such delays, hindrances, or obstructions not due in any part to the SUBCONTRACTOR'S fault, SUBCONTRACTOR shall be entitled only to such extension of time for performance as may be allowed by the CONTRACTOR provided that SUBCONTRACTOR has given written notice within ten (10) days of the commencement of the delay and can substantiate the delay in the form and substance to the satisfaction of the CONTRACTOR.
- 9.2 CONTRACTOR may notify the SUBCONTRACTOR to discontinue all Work or any part thereof. Such notice shall be given to the SUBCONTRACTOR in writing, and, thereupon, the SUBCONTRACTOR shall discontinue such Work or such part thereof as the CONTRACTOR so designates. If CONTRACTOR initiates such convenience termination, it shall pay to SUBCONTRACTOR the value of the Work completed to date, plus any retainage earned but unpaid and reasonable costs of cancellation of any purchase orders, sub-subcontracts or other agreements. No anticipated profit, overhead or similar costs shall be paid.
- 9.2.1 Should there be a work stoppage caused by a strike, picketing, boycott of the SUBCONTRACTOR'S employees or by a voluntary or involuntary cessation of Work by employees of the SUBCONTRACTOR, his agents, suppliers and/or Subcontractors, which in the sole judgment of the CONTRACTOR will cause or is likely to cause a delay in the progress of construction, then upon twenty-four (24) hours written notice delivered either in hand, by fax, e-mail or registered mail, the CONTRACTOR shall have the right to declare the SUBCONTRACTOR in default of this Subcontract Agreement and upon the giving of such notice, the CONTRACTOR shall have the right to take such steps as are necessary to finish the uncompleted portion of the Work to be performed by the SUBCONTRACTOR, including finishing the work with its own employees or those of another Subcontractor. In such event, the CONTRACTOR shall have the right to take possession of and use all of the SUBCONTRACTOR'S materials, (exclusive of tools) intended for use on the Work.

ARTICLE 10 - DISPUTES

- 10.1 Any and all claims or disputes arising out of or relating to this Subcontract Agreement or breach thereof shall be decided by submission to (1) arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association; provided, however, the determination by the OWNER, or any Court, Board of Arbitration, or other tribunal pursuant to the provisions of the Prime Agreement with respect to any dispute or claim relating to this Subcontract Agreement or the Work performed or to be performed hereunder shall be binding upon SUBCONTRACTOR, and SUBCONTRACTOR agrees to accept such determination, provided SUBCONTRACTOR shall have been given reasonable notice of such dispute, proceeding, or litigation and opportunity to defend or present claims.
- 10.2 The parties further agree that, as a condition precedent to instituting legal action against each other or their sureties, they shall participate in non-binding mediation pursuant to the Mediation Rules of the American Arbitration Association.
- 10.3 The prevailing party in any dispute hereunder shall be entitled to recover all reasonable attorneys' fees and costs (including any expert costs) incurred in the prosecution and/or defense of any claims, from investigation through arbitration and any appeal.

ARTICLE 11 - MISCELLANEOUS

- 11.1 In the event that the SUBCONTRACTOR becomes insolvent, or is adjudged a bankrupt, or files for protection under Chapter 11 of the Bankruptcy Act, or makes an assignment for the benefit of creditors or if a Receiver is appointed to administer its affairs or it becomes otherwise disabled from performing this Subcontract Agreement in accordance with its terms, the CONTRACTOR may immediately terminate this Subcontract Agreement by written notice to the SUBCONTRACTOR.
- 11.2 The SUBCONTRACTOR shall have no claim for extra or additional compensation or for any damage allegedly sustained or for any changes or modifications to its Work unless it shall have first complied with all the applicable terms and provisions in the Prime Agreement pertaining to submission of claims, changes, modifications, and damages. SUBCONTRACTOR shall pay a proportionate share of all expenses including attorneys' fees incurred by the CONTRACTOR to prosecute SUBCONTRACTOR claims. In no event shall the CONTRACTOR become or be liable to the SUBCONTRACTOR on account of any such claims in excess of the amount actually received by the CONTRACTOR from the OWNER on account of such claim.
- 11.3 The SUBCONTRACTOR stipulates and agrees that each of the agreements and covenants herein contained, and by it made, constitutes a material condition of this Subcontract Agreement. In the event of any default or other breach by the SUBCONTRACTOR of any condition of this Subcontract Agreement or of the Contract Documents, including, the Prime Agreement, herein incorporated by reference, then, and in that event, the CONTRACTOR may:
- A. Undertake to remedy such default or breach by whatever means it deems, in its discretion, are reasonably necessary;
- B. Deduct from any payment otherwise due or becoming due under this Subcontract Agreement or any other Subcontract or other Agreement between SUBCONTRACTOR and CONTRACTOR, all sums chargeable to SUBCONTRACTOR and damages due from said default or breach; and,

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C. At CONTRACTOR'S option, terminate this Subcontract Agreement for default in the following manner: The CONTRACTOR shall give to the SUBCONTRACTOR written notice of the breach or breaches, and, unless said breach or breaches are cured within three (3) days from the date of the notice, this Subcontract Agreement shall be deemed terminated for default, except for cessation of work in which case termination shall be upon twenty-four (24) hours notice as provided in Article 9.

11.3.1 Upon such termination for default, the CONTRACTOR may take immediate possession of all equipment, materials, tools, and appliances at the site or sites of the Work and may complete said work either with its own forces or by the employment or any other person, firm, or corporation. No further payment shall be or become due the SUBCONTRACTOR following such termination for default. When the work is wholly completed, the SUBCONTRACTOR shall pay CONTRACTOR all costs of completing the work and all damages of every kind or nature caused by said termination less the amount of any balances due the SUBCONTRACTOR.

11.4 The SUBCONTRACTOR shall not employ any workers whose employment is objected to by the CONTRACTOR, OWNER, or other contractors working on the Project. SUBCONTRACTOR shall promptly replace and dismiss any workman or workmen on said project to which the CONTRACTOR or Owner objects.

11.5 SUBCONTRACTOR is an independent contractor with respect to its performance of the Work hereunder. Neither SUBCONTRACTOR nor its employees, subcontractors, vendors, or agents shall be deemed to be employees or agents of the CONTRACTOR for any purpose whatsoever. The Contract Documents shall not be construed to create a contractual relationship of any kind between the ARCHITECT and the SUBCONTRACTOR, between the OWNER and the SUBCONTRACTOR, or between any persons or entities other than the CONTRACTOR and SUBCONTRACTOR.

11.6 SUBCONTRACTOR shall not disclose any details of the Work, except as required by court order, to any person or persons except those engaged in its performance and only then to the extent required for the particular portion of the Work being done. SUBCONTRACTOR shall not give any item concerning details for the Work to the press or news disseminating agency without CONTRACTOR'S prior written approval. No photographs, videos or other renderings are to be released without prior written approval by CONTRACTOR.

11.7 SUBCONTRACTOR agrees that all plans, drawings, sketches, data, designs, engineering forms, or specifications furnished by CONTRACTOR or firms and companies affiliated therewith concerning the Work undertaken by SUBCONTRACTOR under this Subcontract Agreement shall be treated as strictly confidential property of CONTRACTOR and/or OWNER.

11.8 Except as written elsewhere in this Subcontract Agreement, all written communications to CONTRACTOR and SUBCONTRACTOR shall be sent with distribution to the recipient as set out below. Notice by facsimile is acceptable, provided the Sender retains confirmation of the transmission.

CONTRACTOR

GUTIERREZ CONSTRUCTION CO., INC.
BURLINGTON OFFICE PARK
ONE WALL STREET
BURLINGTON, MA 01803
FAX 781/272-3130

Attention: David Ferreira

SUBCONTRACTOR

Comm Tank
84 New Salem Street
Wakefield, MA 01880

Attention: Kevin Hoag

11.9 The Subcontract Agreement is governed by laws of the Commonwealth of Massachusetts.

11.10 Any article or provision of this Subcontract Agreement which may be deemed in violation of law shall not affect in any manner the remaining provisions of this Subcontract Agreement.

11.11 The Subcontract may be amended or modified only by written instrument executed by both CONTRACTOR and SUBCONTRACTOR.

11.12 The documents which comprise the entire Agreement between CONTRACTOR and SUBCONTRACTOR concerning the Work (referred to herein as the "Contract Documents") consist of the following:


1. This Subcontract Agreement
2. Exhibits:

A:	List of Documents, including the Drawings and Specifications and the Prime Agreement and all Attachments thereto
B:	Scope of Work
C:	Insurance Requirements
D-1:	Application for Payment Form (if applicable)
D-2:	Partial Lien Waiver Form (if applicable)
E:	Lien Waiver Form
F:	Change Order Form

IN WITNESS WHEREOF, the parties hereto have read the foregoing, understand completely these terms and conditions, and willingly enter into this Subcontract Agreement the day and year first written above.


CONTRACTOR:

GUTIERREZ CONSTRUCTION CO., INC.

By: 
Name: Doug L. Fainelli
Title: Vice President of Operations

SUBCONTRACTOR:

COMM TANK

By: 
Name: Kevin M. Hoag
Title: President

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Initials for Subcontractor KH

EXHIBIT A
LIST OF CONSTRUCTION DOCUMENTS

Scope of work is based on site with review with Gutierrez Construction, Project Manager, Rich Trodella.

Initials for Gutierrez Construction Co., Inc. ST

Initials for Subcontractor JA

EXHIBIT B
SCOPE OF THE WORK

The Scope of work under this agreement includes, but is not limited to providing all labor, material and equipment to complete **tank removal/install** in accordance with the construction documents list in the attached Exhibit "A" and subject to the following additions, clarifications and /or modifications.

A. CONSTRUCTION REQUIREMENTS

REMOVAL OF EXISTING ASDT:

1. Obtain necessary permit from Acton FD
2. Pump out fuel from the existing 120-gallon ASDT and associated piping
3. Cut opening in to ASDT
4. Remove sludge from ASDT
5. Disconnect and remove fuel oil supply and return pipes from the main tank to the fire pump
6. Disconnect fill and vent pipe
7. Disconnect electrical wires to level sensor
8. Transport and properly dispose of the ASDT

ASDT INSTALLATION:

1. Obtain necessary permit from Acton FD
2. Provide and install one (1) 120-gallon dual wall UL-142 aboveground Highland Tank with supports and exterior standard primer
3. Provide and install new fuel supply and return pipes from the day tank to the fire pump
4. Install an emergency vent for the primary and secondary containment
5. Reconnect electrical wires for level sensor
6. Reconnect existing fill and vent pipe to the new day tank
7. Test level sensor to assure proper operation
8. Install a mechanical interstitial leak sensor

B. GENERAL REQUIREMENTS

1. This subcontractor clearly understands the monthly written Application for Payment shall be in Gutierrez Construction Co., Inc.'s office no later than 5:00 P.M. on the 25th of each month. Any Application for Payment received after 5:00 P.M. on the 25th of each month may not be processed for payment until the 25th of the following month.
2. No Application for Payment will be processed, or work allowed at the site, until GCCI is in receipt of this subcontractor's Certificate of Insurance in accordance with the attached Exhibit "C," and the executed subcontract agreement.
3. A full set of plans and specifications are available at Gutierrez Construction Co., Inc.'s office. This subcontractor acknowledges that he has reviewed and understands these documents and that no exceptions have been taken.
4. The contract amount is inclusive of all applicable taxes, fees, permits, freight, hoisting, insurance, clean-up, supervision, overhead, etc.
5. Where the word "Contractor" appears in the specifications, it shall be interpreted to mean "Subcontractor."
6. All work is to be performed in strict accordance with the plans and specifications listed in Exhibit "A," List of Contract Documents.
7. It is understood that time is of the essence. Therefore, shop drawings, product specifications and data sheets, samples, etc. will be submitted without delay.
8. This subcontractor shall remove all trash and debris relating to his work and deposit it in a dumpster provided by Gutierrez Construction Co., Inc. Failure to do so will prompt Gutierrez Construction Co., Inc. to complete the clean-up and charge this subcontractors account.

Initials for Gutierrez Construction Co., Inc. WV

Initials for Subcontractor KH

9. This subcontractor submit a complete cost breakdown to be used as a progress payment backup. Breakdowns shall include columns showing: (1) Item, (2) Value, (3) Percent Completed to Date, (4) Value Completed to Date, (5) Total Previous Amount, and (6) This Application.
10. This subcontractor will coordinate his work with all other trades.
11. This subcontractor will furnish a monthly purchase and delivery schedule if requested by Gutierrez Construction Co., Inc. If this subcontractor fails to supply this schedule on a monthly basis, or weekly if required, this subcontractor's Application for Payment will not be processed. This schedule will list the following items:
 - a. Item, supplier and order number
 - b. Telephone number of supplier and name of contact
 - c. Shipping date, name of carrier and telephone number
 - d. Anticipated date of arrival on the job site.
12. All materials which are brought onto the job site by this subcontractor, its employees, material suppliers, or subcontractors, must have a "Material Safety Data Sheet" (MSDS) filed with the Department of Environmental Protection (DEP).
13. Quality Engineering (DEQE) if required by the "Right to Know" Law, Chapter 111F of the Massachusetts General Laws. In addition, GCCI will require that this subcontractor file with GCCI a copy of all the MSDS forms that this subcontractor sends to the DEQE pertaining to this project. This subcontractor will be required to hold, GCCI and the owner, harmless if this subcontractor, its employees, suppliers and subcontractors do not comply with the provisions of the Law. All pertinent information must be included in the MSDS form, including the Chemical Abstract Service (CAS) number listed on the "Massachusetts Substance List" (MSL).
14. This subcontractor shall maintain at the project site, a record set (red-line) of as-built drawings for the base building and tenant work as each applies. Upon completion of the work all changes, notes and revisions shall be transcribed on Mylar for submittal to the General Contractor, along with four (4) bound sets of operating instructions, manuals pertaining to equipment installed as well as maintenance instructions. Final payment will not be processed until these requirements are met and accepted by the Engineer, Architect and Owner. As-Built drawings and Operating & Maintenance manuals will also be provided in electronic format on CD.
15. This subcontractor will be responsible for all layout, lines and grade, and coordination required to complete his Scope of the Work. A base line and bench mark will be provided by Gutierrez Construction Co., Inc.
16. This subcontractor shall be responsible for complying with all federal, state and local safety laws, rules and regulations.
17. Overhead, fee and profit will not exceed a combined total of 10 percent (10%) of the cost of the work for additional work or changes in the work.
18. Mechanical, Plumbing, Sprinkler, HVAC and Electrical Subcontractors will submit As-Built Record Drawings at the completion of the Project. Drawings shall consist of one (1) set of Mylar prints along with one (1) copy on Auto Cad release 2005 format (or higher) diskette.

Initials for Gutierrez Construction Co., Inc. my

Initials for Subcontractor KH

EXHIBIT C
MINIMUM INSURANCE REQUIREMENTS

INSURANCE

Before commencing the Work, the Subcontractor shall procure and maintain, at its own expense until final acceptance of the Work, upon all operations and the operations of its Subcontractors, suppliers or material men on the Project, the following policies of insurance with Gutierrez Construction Co., Inc., ("GCCCI"), the Owner, Landlord and the Tenant as additional insureds. All policies, including Workman's Compensation, will include a "Waiver of Rights of Subrogation" against GCCCI, the Owner, Landlord and the Tenant and Lender (if applicable).

(a) Workman's Compensation and Employer's Liability Insurance

Subcontractor shall provide and maintain Worker's Compensation and Employer's Liability Insurance covering all of its employees in conformance with laws of the state in which the work and/or Contract Documents are to be performed. Such insurance shall not have a limit of less than the following:

Employer's Liability	\$100,000 - Each Accident
	\$500,000 - Disease Policy Limit
	\$100,000 - Disease Each Employee

(b) Commercial General Liability

Subcontractor shall procure and maintain coverage to include all operations of the insured and/or Contract Documents and coverage for all liability assumed with the following limits and extensions of coverage.

Coverage to be on an Occurrence Form

Coverage to include: Premises and Operations (including X-Explosion, C-Collapse and A-Underground Coverages as applicable); Contractual; Broad Form Property Damage, including Completed Operations with the following limits:

Bodily Injury and Property Damage	\$1,000,000 - Each Occurrence
	\$2,000,000 - General Aggregate
	\$1,000,000 - Personal Injury

Products and Completed Operations Insurance Aggregate Limit of \$2,000,000 shall be maintained for two (2) years after final payment and Subcontractor shall continue to provide evidence of such coverage to GCCCI, the Owner, Landlord and Tenant on an annual basis during the two-year period.

(c) Business Automobile Liability

Subcontractor shall procure and maintain Business Automobile Liability Insurance covering owned, non-owned and hired motor vehicles with the following combined single limits:

Bodily Injury and Property Damage	\$1,000,000 Each Occurrence (C.S.L.)
-----------------------------------	--------------------------------------

(d) Umbrella Liability

Subcontractor shall procure and maintain an Umbrella Liability Policy with limits of \$3,000,000.

(e) Additional Insured

GCCCI, Owner, Lender (if applicable), Landlord (if applicable) and Tenant (if applicable) shall be named as additional insured on all liability policies of insurance maintained by Subcontractor to cover the Work to be performed under this Subcontract Agreement.

(f) Evidence of Insurance

Prior to the commencement of any Work on site, Subcontractor shall provide to Contractor evidence, reasonably satisfactory to Contractor, that all insurance required hereunder is in full force and effect.

Initials for Gutierrez Construction Co., Inc. NY

Initials for Subcontractor KH

Exhibit D-1



GUTIERREZ CONSTRUCTION CO., INC.
 Burlington Office Park
 One Wall Street
 Burlington, MA 01803
 (781) 272-7000/Fax (781) 272-3130

SUBCONTRACTOR'S APPLICATION FOR PAYMENT

SUBCONTRACTOR _____ WORK PERFORMED DESCRIBE BRIEFLY _____ AGREEMENT NO. _____ PROJECT NAME _____ PROJECT LOCATION _____	DATE _____ APPLICATION NUMBER _____ 1. TOTAL VALUE TO DATE _____ % \$ _____ 2. LESS _____ % RETENTION \$ _____ 3. REMAINDER _____ 4. DEDUCT AMOUNT OF PREVIOUS PAYMENTS \$ _____ (Item 3 From Previous Month) 5. THIS APPLICATION \$ _____ We hereby make application in the above sum on account of work performed by us thru _____ AUTHORIZED SIGNATURE _____ DATE _____ BY _____ TITLE _____ DATE _____
---	---

AMOUNT OF AGREEMENT NO.		VALUE	% COMPLETE	VALUE OF WORK COMPLETED TO DATE	PREVIOUS APPLICATION (INCLUDING RETENTION)	THIS APPLICATION (INCLUDING RETENTION)
APPV'D. DATE	CHANGE ORDERS (LIST EACH)					
	1.					
	2.					
	3.					
	4.					
	5.					
	6.					
	7.					
	8.					
	9.					
	10.					
	11.					
	12.					
	13.					
	14.					
	15.					
	16.					
	17.					
(SUB) TOTAL						

FOR GUTIERREZ CONSTRUCTION CO., INC. USE ONLY				FOR ACCOUNTING ONLY
APPROVAL	DATE	BY		
		V.P. CONSTR.	DATE PAID:	
		CONSTR. MGR.	AMOUNT PAID:	
		SUPT.	CHECK NUMBER:	

Initials for Gutierrez Construction Co., Inc. My

Initials for Subcontractor PH

SUBCONTRACTOR'S CERTIFICATE

TO: _____ ("Bank")
 _____ ("Contractor")
 RE: GUTIERREZ CONSTRUCTION CO., INC. ("Owner")
 _____ ("Project")

APPLICATION FOR PAYMENT THRU _____ (period)

The undersigned, a Subcontractor for a portion of construction for the above described development, does hereby certify to the Contractor and Owner as follows:

(1) Under date of _____, we entered into a Subcontract with the Contractor for the construction of a portion and/or components to form a portion of said development. Such Subcontract is still in full force and effect and has not been amended, in any respect whatever, as of the date of this Application, except

(2) This Application for Payment is in full compliance with said Subcontract. Upon payment of the same, the undersigned will have no other or additional claim against the Owner or the Contractor on account of said Subcontract or otherwise (including, without limitation, any claims on account of all work furnished by us and labor or materials furnished which would entitle any person to any lien under Chapter 254 of the Massachusetts General Laws) for and with respect to the period of time up to and including the date of our said Application except for retainage, for which payment is to be made to us as provided in our Subcontract.

(3) That the Contractor is not in default in any of its obligations to the undersigned, as of the date hereof.

(4) That full payment has been made of all obligations incurred by the undersigned to our subcontractors, workmen and materialmen for and with respect to all work and materials (including without limitation labor and materials furnished which would entitle any person to any lien under Chapter 254 of the Massachusetts General Laws) supplied through and including the date of our said Application, except, as to our subcontractors, for customary retainage not exceeding ten per cent (10%) of amounts earned by such subcontractors.

(5) We are not in default of any of our obligations to any of our subcontractors, workmen or materialmen, for and with respect to all work and material (including without limitation labor and materials furnished which would entitle any person to any lien under Chapter 254 of the Massachusetts General Laws) supplied through and including the date of this Application. As of this date, the only amounts not paid to subcontractors, workmen or materialmen on account of work or material (including without limitation labor and materials furnished which would entitle any person to any lien under Chapter 254 of the Massachusetts General Laws) supplied through and including the date of this Application are: (a) amounts shown as allocable to work performed for the period covered by this Application and to be paid from the proceeds thereof; (b) retainage; and (c) (If there is any other outstanding unpaid bills, such as bills on account of disputed work, list, otherwise, insert the word "NONE")

This Certificate is given to induce the Bank to make an advance against the proceeds of the loan which the Owner has secured from the Bank relative to the above mentioned development, and to induce the Owner to make payment under the Contractor's current Application for Payment, and it is intended that the Bank and the Owner shall rely upon the same.

SUBCONTRACTOR

(Corporate Seal)

by: _____

title: _____

Hereunder duly authorized

dated: _____

Initials for Gutierrez Construction Co., Inc.

Initials for Subcontractor

EXHIBIT D-2
SUBCONTRACTOR'S CERTIFICATE

TO: _____ ("Bank")
_____ ("Contractor")

RE: GUTIERREZ CONSTRUCTION CO., INC.

100 Nagog Park LP ("Owner")

100 Nagog Park Acton ("Project")

AIA G702/G703 No(s): _____

SA No.: **111162-011**

APPLICATION FOR PAYMENT THRU _____ (period)

The undersigned, a Subcontractor for a portion of construction for the above described development, does hereby certify to the Contractor and Owner as follows:

(1) Under date of _____, 200__, we entered into a Subcontract Agreement with the Contractor for the construction of a portion and/or components to form a portion of said development. Such Subcontract Agreement is still in full force and effect and has not been amended, in any respect whatever, as of the date hereof, except:
(List amendments or if none, state "NONE")

(2) This Certificate and said AIA G702 and G703 documents (collectively, the "Application") is in full compliance with said Subcontract Agreement. Upon payment of the same, the undersigned will have no other or additional claim against the Owner or the Contractor on account of said Subcontract Agreement or otherwise (including without limitation, any claims on account of all work furnished by us and labor or materials furnished which would entitle any person to any lien under Chapter 254 of the Massachusetts General Laws) for and with respect to the period of time up to and including the date of our said Application except for retainage, for which payment is to be made to us as provided in our Subcontract Agreement.

(3) That the Contractor is not in default in any of its obligations to the undersigned, as of the date hereof.

(4) That full payment has been made of all obligations incurred by the undersigned to our subcontractors, workmen and materialmen for and with respect to all work and materials (including without limitation labor and materials furnished which would entitle any person to any lien under Chapter 254 of the Massachusetts General Laws) supplied through and including the date of our said Application, except, as to our subcontractors, for customary retainage not exceeding ten percent (10%) of amounts earned by such subcontractors.

(5) We are not in default of any of our obligations to any of our subcontractors, workmen or materialmen, for and with respect to all work and material (including without limitation labor and materials furnished which would entitle any person to any lien under Chapter 254 of the Massachusetts General Laws) supplied through and including the date of this Application. As of this date, the only amounts not paid to subcontractors, workmen or materialmen on account of work or material (including without limitation labor and materials furnished which would entitle any person to any lien under Chapter 254 of the Massachusetts General Laws) supplied through and including the date of this Application are: (a) amounts shown as allocable to work performed for the period covered by this Application and to be paid from the proceeds thereof; (b) retainage; and (c) (If there is any other outstanding unpaid bills, such as bills on account of disputed work, list, otherwise, insert the word "NONE").

This Certificate is given to induce the Bank to make an advance against the proceeds of the loan which the Owner has secured from the Bank relative to the above mentioned development, and to induce the Owner to make payment under the Contractor's current Application for Payment, and it is intended that the Bank and the Owner shall rely upon the same.

SUBCONTRACTOR:

(Corporate Seal)

Dated: _____

By: _____

Name: _____

Title: _____

Hereunder duly authorized

Initials for Gutierrez Construction Co., Inc. SG

Initials for Subcontractor KH

EXHIBIT E
RELEASE OF LIENS AND INDEMNITY AGREEMENT

The undersigned acknowledges that with the receipt of _____ Dollars (\$_____) from Gutierrez Construction Co., Inc. ("GCCCI"), a Massachusetts corporation, as final payment and in full of all monies due or to become due to the undersigned from said GCCCI, in connection with the Subcontract Agreement dated 9/12/2011 "**Contract Date**" (SA# **111162-011**) and in consideration of said sum, releases said GCCCI and **100 Nagog Park LP** ("Owner") of and from all claims and demands, including any and all liens and the right to lien, in any way arising out of said contract, written, oral or implied, or work done or materials furnished, and acknowledges full performance by said GCCCI and Owner of all obligations under said contract.

The undersigned acknowledges that all charges for labor, materials, services, sales and use taxes, and all subcontractors and suppliers, of any tier, who have supplied labor, materials and/or equipment, and of every other nature in connection with his contract have been paid in full, and that there remains no charge by any subcontractor, vendor or individual furnishing labor or materials in connection with his contract for which a lien could be filed.

The undersigned hereby further declares and agrees that in the event that any lien or other claim for damage or compensation should be brought against GCCCI and Owner or their building or premises regarding said contract, the undersigned will protect the said parties and defend any suit or action brought against them by reason of any lien or other form of claim or action arising out of said contract and hold them harmless and indemnified therefrom, including without limitation payment of all reasonable attorneys' fees and bond costs.

Signed and sealed by the undersigned (if a corporation, by its duly authorized officer and with corporate seal) this _____ day of _____, 2008.

Comm Tank

(Corporate Seal)

By: _____
Title: _____

State/Commonwealth of _____
_____ County

On this ____ day of _____, 200_, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☐ personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document(s), and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public:

(Official Seal)

My Commission Expires: _____

Initials for Gutierrez Construction Co., Inc. WV

Initials for Subcontractor KE

Exhibit F Subcontract Change Order

Date:
To Subcontractor/Vendor:

Architect's Project No:
Contract Date:

The Contract is hereby revised by the following items:

PCO	Item #	Description	Quantity	UOM	Unit Price	Amount
-----	--------	-------------	----------	-----	------------	--------

The original Contract Value
Sum of changes by prior Subcontract Change
The Contract Value prior to this Subcontract Change Order
The Contract Value will be changed by this Subcontract Change Order in the amount
The new Contract Value including this Subcontract Change Order will
The Contract duration will be changed
The revised Substantial Completion date as of this Subcontract Change Order

CONTRACTOR

SUBCONTRACTOR/VENDOR

Address

Address

By

By

SIGNATURE

SIGNATURE

DATE

DATE

Initials for Gutierrez Construction Co., Inc. BY

Initials for Subcontractor KA



GUTIERREZ CONSTRUCTION CO., INC.

Burlington Office Park
One Wall Street
Burlington, Massachusetts 01803

T: 781.272.7000

F: 781.272.3130

RELEASE OF LIENS AND INDEMNITY AGREEMENT

The undersigned acknowledges that with the receipt of Four Thousand Five Hundred Fifty and 00/100 Dollars (\$4,550.00) from Gutierrez Construction Co., Inc., a Massachusetts corporation, as final payment and in full of all monies due or to become due to the undersigned from said Gutierrez Construction Co., Inc., in connection with Contract #1162-011 regarding 100 Nagog Park @ 100 Nagog Park, Acton, Massachusetts and in consideration of said sum, releases said Gutierrez Construction Co., Inc. and 100 Nagog Park L.P. of and from all claims and demands in any way arising out of said contract, written, oral or implied, or work done or materials furnished, and acknowledges full performance by said Gutierrez Construction Co., Inc. and said 100 Nagog Park L.P. of all obligations under said contract.

The undersigned acknowledges that all charges for labor, materials, services, sales and use taxes, and of every other nature in connection with his contract have been paid in full, and that there remains no charge by any subcontractor, vendor or individual furnishing labor or materials in connection with his contract for which a lien could be filed.

The undersigned hereby further declares and agrees that in the event that any lien or other claim should be brought against Gutierrez Construction Co., Inc., 100 Nagog Park L.P or their building or premises regarding said contract, the undersigned will protect the said parties and defend any suit or action brought against them by reason of any lien or other form of claim or action arising out of said contract and hold them harmless and indemnified therefrom.

Signed and sealed by the undersigned (if a corporation, by its duly authorized officer and with corporate seal) this 27th day of December, 2011

Comm Tank, Inc.
Company Name

(Corporate Seal)

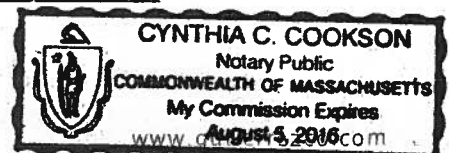
By: [Signature]
Title: President

Commonwealth of Massachusetts

_____ County

On this 27th day of December, 2011, before me, the undersigned notary public, personally appeared Kevin M. Hoag, proved to me through satisfactory evidence of identification, which was ☒ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, ☒ personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document(s), and acknowledged to me that he/she signed it voluntarily for its stated purpose.
(official seal)

Cynthia C. Cookson
Notary Public
My Commission Expires:



**GUTIERREZ CONSTRUCTION CO., INC.**

Burlington Office Park
One Wall Street
Burlington, MA 01803
(781) 272-7000/Fax (781) 272-3130

BY: _____

NOV 1 2011

**SUBCONTRACTOR'S
APPLICATION FOR PAYMENT**

SUBCONTRACTOR

Common TankWORK PERFORMED
DESCRIBE BRIEFLY

84 New Salem St.
Wakefield, MA 01880
Remove & install storage
tanks

AGREEMENT NO.

111162-0087

PROJECT NAME

11-1162-001

PROJECT LOCATION

100 Nagog Park
Aston, MA 01720

DATE

11/11/11APPLICATION
NUMBER1. TOTAL VALUE TO DATE 100 %\$ 4550-2. LESS 0 % RETENTION

\$

3. REMAINDER

\$

4. DEDUCT AMOUNT OF PREVIOUS PAYMENTS

\$ 0

(ITEM 3 FROM PREVIOUS MONTH)

5. THIS APPLICATION

We hereby make application in the above sum
on account of work performed by us thru

\$ 4550-

AUTHORIZED SIGNATURE

11/11/11
DATE

BY

TITLE

[Signature]
President

11/11/11
DATE

AMOUNT OF AGREEMENT NO.		VALUE	% COMPLETE	VALUE OF WORK COMPLETED TO DATE	PREVIOUS APPLICATION (INCLUDING RETENTION)	THIS APPLICATION (INCLUDING RETENTION)
		\$ <u>4550-</u>	<u>100%</u>	\$ <u>4550-</u>	<u>-</u>	\$ <u>4550-</u>
APPV'D. DATE	CHANGE ORDERS (LIST EACH)					
	1.					
	2.					
	3.					
	4.					
	5.					
	6.					
	7.					
	8.					
	9.					
	10.					
	11.					
	12.					
	13.					
	14.					
	15.					
	16.					
	17.					
(SUB) TOTAL						\$ <u>4550-</u>

FOR GUTIERREZ CONSTRUCTION CO., INC. USE ONLY

APPROVAL

DATE

BY

V.P.
CONSTR.CONSTR.
MGR.

SUPT.

DATE PAID:

AMOUNT PAID:

CHECK NUMBER:

FOR ACCOUNTING ONLY

JAN - 6 2012

By

41659